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OFFICE OF PETITIONS

In re Application of
Hilton et al.
Application No. 09/846,138
Filed: April 30, 2001
Attorney Docket No. 10992825-1

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.181, filed May 4, 2007, to withdraw the holding of abandonment in the above-identified application.

On October 4, 2006, the Office mailed a Notice of Abandonment, indicating that the application became abandoned for failure to timely reply to the Office letter mailed on March 21, 2005. Applicants request that the Office withdraw the holding of abandonment because they did not receive the Office action of March 21, 2005. Specifically, applicants assert that an inspection of transaction history in Public PAIR contains an entry "Mail Notice of Informal or Non-responsive Amendment," dated March 21, 2005; however, the Office action was not located in the Image File Wrapper. Therefore, applicants contend that the USPTO did not mail the Office Action of March 21, 2005, to them.

PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

The showing required to establish non-receipt of an Office communication must include a statement from the practitioner, stating that the practitioner did not receive the Office communication and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See MPEP 711.03(c)(I)(A). For example, if a three-month period for reply was set in the non-received Office communication, a copy of the docket report showing all replies docketed for a date three months from the mail date of the non-received Office communication must be submitted as documentary proof of non-receipt of the Office communication. The showing outlined above may not be sufficient if there are circumstances that point to a

conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail (e.g. if the practitioner has a history of not receiving Office communications).

After reviewing the documents submitted on petition, the Office concludes that the showing of record is sufficient to warrant withdrawal of the holding of abandonment. The practitioner for applicants submitted copies of docket records where the Office Action would have been entered had it been received and docketed. The practitioner attested to the fact that a search of the file jacket and docket records indicated that the Office Action was not received. Accordingly, applicants presented the required showing under 37 CFR 1.181.

The petition under 37 CFR 1.181 is **GRANTED**. No petition fee is required.

Technology Center Art Unit 2611 has been advised of this decision. The matter is being referred to the Technology Center's technical support staff for mailing of the Office Action dated March 21, 2005. The time period for responding to the Office Action will be set to run from the mailing date of the new Office Action.

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3211.

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